

**United States Department of Labor
Employees' Compensation Appeals Board**

LESLIE J. BURRIS, Appellant

and

**DEPARTMENT OF THE AIR FORCE,
WRIGHT-PATTERSON AIR FORCE BASE,
Dayton, OH, Employer**

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**Docket No. 05-1006
Issued: August 5, 2005**

Appearances:
Leslie J. Burris, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On March 28, 2005 appellant timely filed an appeal from March 29, 2004 and March 4, 2005 decisions by the Office of Workers' Compensation Programs which found that appellant had not established that he had a recurrence of disability causally related to an employment injury. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant has met his burden of proof that he sustained a recurrence of disability on October 1, 2003 causally related to his December 5, 2002 employment injury.

FACTUAL HISTORY

On December 5, 2002 appellant, then a 50-year-old equipment specialist, was exiting a rental car at a test site in Winnipeg, Manitoba in Canada when he slipped on snow and ice. He tried to grab the steering wheel and door for support but could not hold on to them. Appellant

felt a pull in both shoulders as he landed on his sacrum. He did not lose any time from work at that time but he was placed on limited duty.

Appellant submitted medical records in support of his claim. A December 9, 2002 note indicated that appellant had a strain of both shoulders and arms, a contusion and strain of the lumbosacral region and in the low back, strains of the upper back and right calf and contusions of the right elbow. Dr. Leslie A. Bentinganan, an osteopath, reported that appellant had decreased motion in the left shoulder with weakness and pain radiating down the lateral shoulder. She noted that appellant also had low back pain and a strain of the right calf. Dr. Bentinganan indicated that appellant had lumber lordosis with tenderness of the spine from L4 to S1. In a December 10, 2002 report, Dr. Daniel J. Quenneville, a Board-certified radiologist, noted that lumbar x-rays showed bilateral L5 spondylosis with Grade 1 spondylolisthesis and degenerative disc disease at L4-5 and the thoracolumbar junction. In a February 8, 2003 report, Dr. Stephen J. Pomeranz, a Board-certified radiologist, stated that a lumbar magnetic resonance imaging (MRI) scan showed no disc protrusions or extrusions; spondylosis, most prominent at L3-4 and L4-5 without high grade neural effacement; multilevel facet arthropathy at L4-5 and L5-S1; varying degrees of neural foraminal narrowing particularly at L4-5; and a Grade 1 retrolisthesis of L4 on L5 without definite spondylosis.

On November 18, 2003 appellant filed a claim for a recurrence of disability effective October 1, 2003. He stated that he could not lift over five pounds. Appellant commented that he was in constant pain and had not returned to full duty. He indicated that he could not lift without pain and had trouble going to sleep because of pain. Appellant noted that he had been on pain medication since the injury which masked the pain. He commented that, when he tried to taper off the drugs, the pain returned. Appellant reported that in May 2003 he sustained a dislocation of his right shoulder, bruised right wrist and bruised right ankle. He related that he was being treated for a torn rotator cuff and tendon damage.

In a January 2, 2004 letter, the Office accepted appellant's original claim for bilateral shoulder strains, contusions of the back and right elbow, a back sprain and a right calf strain. The Office informed appellant that he needed to submit additional medical evidence to establish that his current disability was causally related to the December 5, 2002 employment injury.

In a March 29, 2004 decision, the Office denied appellant's claim because the factual and medical evidence did not establish that appellant's claimed recurrence of disability resulted from the accepted work injury.

Appellant requested a hearing before an Office hearing representative. At the November 16, 2004 hearing, appellant's attorney noted that appellant had another workers' compensation claim for a May 3, 2003 injury to his right shoulder which had been accepted by the Office. Appellant had surgery on the right shoulder in February 2004 and gradually returned to full duty. He indicated that his claim for recurrence of disability referred to his left shoulder. Appellant commented that he did not feel any problems in the left shoulder until he began tapering off the pain medication.

In a March 4, 2005 decision, the Office hearing representative found that appellant had not met his burden of proof in establishing that he had a recurrence of disability causally related to his December 5, 2002 employment injury.

LEGAL PRECEDENT

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹

ANALYSIS

Appellant submitted several medical reports from physicians at the employing establishment who indicated that he had bilateral strained shoulders and low back pain radiating into his right leg. X-rays and an MRI scan of the lumbar region showed spondylosis L3-4 and L4-5, facet arthropathy, neural foraminal narrowing and a Grade 1 retrolisthesis of L4 on L5 without definite spondylosis. However, these reports were all dated before the date of the alleged recurrence of disability, October 1, 2003. He did not submit any medical evidence in which a physician specifically stated that appellant had a recurrence of disability beginning October 1, 2003, due to a worsening of his accepted condition that was directly related to his December 5, 2002 employment injury. Appellant did not offer any explanation of whether his accepted December 5, 2002 employment-related condition worsened such that had a recurrence of disability on October 1, 2003. He did not submit any medical evidence that described his condition after October 1, 2003 and discussed why he was disabled for work. Appellant therefore did not meet his burden of proof in establishing that he had a recurrence of disability causally related to his employment injury.

The Board also notes that appellant has not alleged a change in the nature of the light work requirements or that light work was no longer available.

CONCLUSION

Appellant did not establish that he had a recurrence of disability causally related to his December 5, 2002 employment injury.

¹ William M. Bailey, 51 ECAB 197 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs, dated March 4, 2005 and March 29, 2004, be affirmed.

Issued: August 5, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board